

Message Text

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O R 101617Z APR 78
FM SECSTATE WASHDC
TO AMEMBASSY PARIS IMMEDIATE
INFO AMEMBASSY LONDON
AMEMBASSY BONN

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E.O. 11652: N/A

TAGS: EAIR, FR

SUBJECT: US-FRANCE CIVAIR ISSUES

1. WITH AT LEAST PARTIAL SETTLEMENT OF AIR FARE/CHARTER
PRICE ISSUE, REMAINING IMMEDIATE AVIATION ISSUES WITH
FRANCE APPEAR BE AS FOLLOWS:

A. PAN AM CHANGE OF GAUGE AT LONDON.

B. PAN AM CARRIAGE OF ON-LINE CONNECTING TRAFFIC BETWEEN
LONDON AND PARIS.

C. NATIONAL'S DESIRE TO TRANSFER OPERATIONS TO CDG.

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D. AIR FRANCE USE OF CONCORDE ON WASHINGTON-MEXICO CITY
BLIND SECTOR FLIGHTS, AND RELATED ISSUE OF CONTINUATION
TWA'S GENEVA-NICE BLIND SECTOR FLIGHTS.

2. RE CHANGE OF GAUGE, DEPT BELIEVES US VIEWS SHOULD NOW
BE GIVEN TO GOF FORMALLY. ACCORDINGLY, EMBASSY REQUESTED

DELIVER NOTE OR AIDE MEMOIRE TO GOF, AS FOLLOWS:

BEGIN TEXT: THE FRENCH AERONAUTICAL AUTHORITIES HAVE
RECENTLY DISAPPROVED PAN AMERICAN AIRWAYS' PROPOSED CHANGE

OF GAUGE IN LONDON IN CONNECTION WITH ITS US-LONDON-PARIS
FLIGHT. (THE PROPOSED CHANGE OF GAUGE INVOLVES TRANSFER
OF TRAFFIC IN LONDON FROM A B-747 AIRCRAFT TO A B-727.)
THE GOVERNMENT OF THE UNITED STATES CONSIDERS THE PROPOSED
CHANGE OF GAUGE CONSISTENT WITH AND AUTHORIZED BY THE US-
FRANCE AIR SERVICES AGREEMENT, AS AMENDED, AND THEREFORE
OBJECTS TO THE DGCA'S DISAPPROVAL.

UNDER THE BILATERAL AGREEMENT (ANNEX SECTION II), UNITED
STATES AIRLINES HAVE THE RIGHT "TO CONDUCT AIR TRANSPORT
SERVICES" OVER THE AGREED ROUTES, WHICH INCLUDE A ROUTE TO
PARIS THROUGH LONDON. THIS GENERAL RIGHT IS UNQUALIFIED,
ALTHOUGH OTHER SECTIONS OF THE AGREEMENT IMPOSE LIMITATIONS
IN CERTAIN CIRCUMSTANCES. FOR EXAMPLE, SECTION VI OF THE
ANNEX AUTHORIZES A CHANGE OF GAUGE WITHIN THE TERRITORY OF
FRANCE ONLY IN CERTAIN CIRCUMSTANCES. BUT THERE IS NO
COMPARABLE PROVISION LIMITING AN AIRLINE'S ABILITY TO CHANGE
GAUGE OUTSIDE OF FRANCE. IT IS INSTEAD A MATTER FOR DIS-
CUSSION AND AGREEMENT BETWEEN THE COUNTRY FROM WHICH THE
FLIGHT ORIGINATES (IN THIS CASE, THE US) AND THE THIRD
COUNTRY IN WHICH THE CHANGE OF GAUGE OCCURS (IN THIS CASE,
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THE UK). THE SOLE INTEREST OF FRANCE IN THIRD-COUNTRY
CHANGE OF GAUGE IS TO ENSURE COMPLIANCE BY THE US WITH THE
PRINCIPLES OF SECTION IV OF THE ANNEX.

THIS INTERPRETATION OF THE AGREEMENT CONCERNING THIRD-
COUNTRY CHANGE OF GAUGE IS STRONGLY SUPPORTED BY SECTION
VII OF THE ANNEX. SECTION VII PROVIDES THAT EACH CONTRACT-
ING PARTY MAY UNILATERALLY CHANGE THE POINTS SERVED BY ITS
DESIGNATED AIRLINES OUTSIDE THE TERRITORY OF THE OTHER
CONTRACTING PARTY, SO LONG AS NOTICE IS GIVEN. THE
PARTIES' EXPLICIT WILLINGNESS TO PERMIT UNILATERAL ROUTE
CHANGES IN THIRD COUNTRIES SIMPLY CANNOT BE RECONCILED WITH
THE FRENCH HYPOTHESIS THAT THE PARTIES INTENDED TO PRECLUDE
UNILATERAL CHANGES OF GAUGE. IN VIEW OF THE OVERWHELMING
IMPORTANCE OF ROUTE CHANGES AND THE RELATIVE INSIGNIFICANCE
OF AIRCRAFT TRANSFERS, ANY INTERPRETATION OF THE AGREEMENT
TO PROHIBIT THIRD-COUNTRY CHANGE OF GAUGE IS ARBITRARY AND
UNREASONABLE.

FURTHER SUPPORT FOR UNILATERAL THIRD-COUNTRY CHANGE OF
GAUGE AUTHORITY IS THE AGREED MINUTES OF NEGOTIATIONS HELD
JULY 20 TO AUGUST 5, 1959. SECTION II OF THE MINUTES

REFLECTS THE FRENCH DELEGATION'S OBJECTION TO USE OF AN INCREASED NUMBER OF AIRCRAFT BEYOND THE POINT OF TRANSHIPMENT. NO OTHER CONCERN REGARDING CHANGE OF GAUGE WAS EXPRESSED. MOREOVER, THE MINUTES DO NOT INDICATE THAT THE FRENCH DELEGATION WAS CONCERNED ABOUT CHANGE OF GAUGE OUTSIDE FRENCE.

THE CONDUCT OF THE PARTIES SUBSEQUENT TO CONCLUSION OF THE AGREEMENT ALSO SUPPORTS THE US VIEW THAT THIRD-COUNTRY CHANGE OF GAUGE IS PERMITTED. PAN AMERICAN HAS INTERMITTENTLY CHANGED GAUGE IN THIRD COUNTRIES ON US-PARIS-BEYOND FLIGHTS. THE FRENCH AERONAUTICAL AUTHORITIES HAVE NEVER OBJECTED TO THIS PRACTICE AND HAVE THEREFORE IMPLICITLY APPROVED ITS USE.
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FINALLY, THE US VIEW IS SUPPORTED BY CHENG, THE LAW OF INTERNATIONAL AIR TRANSPORT. IN BILATERAL AIR TRANSPORT AGREEMENTS SIMILAR TO THE US-FRANCE AGREEMENT, CHENG STATES:

"IT WOULD SEEM THAT A CHANGE OF GAUGE MAY TAKE PLACE AT ANY POINT EN ROUTE AND THE CONDITIONS GOVERNING IT APPLY ONLY IF THE CHANGING POINT IS IN THE TERRITORY OF EITHER CONTRACTING PARTY, INCLUDING THAT OF THE STATE DESIGNATING THE AIRLINE."
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IN SUMMARY, THE GOVERNMENT OF THE UNITED STATES BELIEVES THAT THIRD-COUNTRY CHANGE OF GAUGE IS CONSISTENT WITH THE LETTER AND SPIRIT OF THE US-FRANCE AIR SERVICES AGREEMENT. PAN AMERICAN'S PROPOSED US-LONDON-PARIS FLIGHTS INVOLVING A CHANGE OF GAUGE IN LONDON SHOULD BE PROMPTLY APPROVED BY THE FRENCH AERONAUTICAL AUTHORITIES. ACCORDINGLY, IT IS REQUESTED THAT THE GOVERNMENT OF FRANCE RECONSIDER ITS ACTION IN LIGHT OF THE FOREGOING. END TEXT.

3. WE ACCEPT THAT US-FRANCE AGREEMENT DOES NOT ALLOW CARRIAGE OF ON-LINE CONNECTING TRAFFIC BETWEEN LONDON AND PARIS. EMBASSY SHOULD NOT, THEREFORE, RAISE THIS ISSUE AGAIN. IT IS ONE OF ISSUES WE WILL ADDRESS IN THE OVERALL PROPOSAL MENTIONED IN FOURTH PARA OF DEPT'S MARCH 29 NOTE TO FRENCH (STATE 81000).

4. RE NATIONAL SERVICE TO CDG, DEP ASST SECY ATWOOD GAVE FRENCH LEGAL BRIEF ON THIS MATTER DURING HIS VISIT TO PARIS MARCH 24 AND WAS PROMISED A REPLY. EMBASSY SHOULD INQUIRE STATUS OF MATTER AND URGE EARLY REPLY.

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5. RE CONCORDE ISSUE, FRENCH EMBASSY (CHARGE BOYER)
DELIVERED NOTE TO DEPT (ATWOOD) ON APRIL 7 REPLYING TO US
NOTE OF MARCH 29. GIST IS THAT, UNLESS CAB AND FAA ISSUE
NECESSARY AUTHORIZATIONS FOR AIR FRANCE TO OPERATE CONCORDE
BETWEEN WASHINGTON AND MEXICO CITY ON BLIND SECTOR BASIS BY
MAY 1, TWA'S GENEVA-NICE AUTHORITY WOULD NOT BE EXTENDED
BEYOND APRIL 30. WE EXPLAINED THAT FAA ACTION BY MAY 1 WAS
VIRTUALLY IMPOSSIBLE (STATE 85437) AND THAT, IF TWA GENEVA-
NICE SERVICE SUSPENDED AS A RESULT, WE COULD NOT SAY

WHETHER US WOULD STILL BE WILLING TO REINSTATE EXCHANGE OF
BLIND SECTOR RIGHTS AT A LATER DATE BECAUSE TWA HAD OPTION
OF SERVING NICE VIA BARCELONA WHERE US ALREADY HAD NECES-
SARY RIGHTS. WE SAID WE WOULD RESPOND TO FRENCH NOTE
AFTER FURTHER REVIEW. FYI. WE ARE ADVISED BY TWA THAT,
IF FRENCH DO NOT EXTEND BLIND SECTOR AUTHORITY, IT PROBABLY
HAS NO OPERATIONAL ALTERNATIVE BUT TO SUSPEND SERVICE FOR
MONTH OR MORE UNTIL BARCELONA-NICE OR SOME OTHER SERVICE
PLAN CAN BE PUT TOGETHER OPERATIONALLY. END FYI. VANCE

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